

# **The Maintenance of Orderly Disorder: Modernity, Markets and the Pseudo-Pacification Process**

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## **Abstract**

In contrast with the rather violent and unstable period between the collapse of the Roman Empire and the rise of Plantagenet monarchy, the earliest phase of England's market economy coincided with a remarkable attenuation of brutal interpersonal violence. While, for some, this diminution of aggression is indicative of a 'civilizing process', this paper sets out to advance our theorization of the shift from physically violent to pacified socioeconomic competition in England and Western Europe between the late fourteenth century and the mid-twentieth century. In this pursuit we draw upon the more critical theory of the 'pseudo-pacification process' to explain how physical violence was sublimated and harnessed to drive the nascent market economy, which established and reproduced an economically productive condition of pseudo-pacified 'orderly disorder'.

**Key Words:** Civilizing Process, Pseudo-Pacification, Orderly Disorder, Violence, Market Economy.

## **1. Introduction**

A good deal of historical evidence suggests that the earliest phases of Western liberal capitalism coincided with a remarkable decline in the more egregious forms of interpersonal violence.<sup>4</sup> In contrast, the period between the collapse of the Roman Empire around 400 AD and the rise of the Plantagenet monarchy toward the end of the thirteenth century seems to have been rather violent and destructive. The archaeological record of the British Isles, along with much of Western Europe, suggests a pronounced and multifaceted technological decline alongside a social order

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<sup>4</sup> Hall, S. 'The Emergence and Breakdown of the Pseudo-Pacification Process' in *Assaulting the Past*, edited by K. Watson (Cambridge: Cambridge University Press, 2007)

that relied on intimidation and privatized physical violence as the principal means of social ordering and economic acquisition.<sup>5</sup> By the beginning of the fourteenth century, however, the capacity to do harm in the service of instrumental or expressive interests was increasingly repressed, initially by the nascent state, in ways that reduced violence in civil society in order to inspire and energize more economically productive social interactions.<sup>6</sup>

Elias<sup>7</sup> described the dynamic force behind this socio-historical transformation as a ‘civilizing process’, in which human beings underwent a significant change in their emotional constitution as they developed sentiments of revulsion towards violence and bloodshed. For Elias, the three cornerstones of this process were the state’s monopolisation of violence, the maintenance of social interdependence and the diffusion of ‘manners’, or civilizing behavioural codes. However, it has become increasingly clear that there are a number of problems with Elias’s analysis, not least of which is his apparent reluctance to plumb the depths of political economy. Mucchielli<sup>8</sup> and Wieviorka<sup>9</sup> identify similar trends throughout Europe but frame them in a ‘pacification process’ much more reliant on the maintenance of social institutions external to the individual. The sustainability of pacifying social systems, they suggest, may depend on unstable political, socioeconomic and cultural contexts in which disruptive forces abound including the ebb and flow of ‘business cycles’, the distortion of social institutions and relations, and the establishment and reproduction of a highly competitive and individualistic consumer culture. The upshot of this contextualized critique of the ‘civilizing process’ is that the decline in fatal and serious violence in the public sphere was not accompanied by a general decline in crime<sup>10</sup> or a general improvement in social harmony.<sup>11</sup>

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<sup>5</sup> Maddern, P. *Violence and Social Order: East Anglia, 1422-1442*, (Oxford: Oxford University Press, 1992); Ward-Perkins, B. *The Fall of Rome and the End of Civilisation*, (Oxford: Oxford University Press, 2005)

<sup>6</sup> Hall, S. ‘The Socioeconomic Function of Evil’ in *Sociological Review Monograph: Violence and Society: Towards a New Sociology*, edited by Ray, L & Kirby, J (Chichester: Wiley, 2014) 13-31

<sup>7</sup> Elias, N. *The Civilizing Process*, Rev. Edn. (Oxford: Blackwell, 1994 [1939])

<sup>8</sup> Mucchielli, L, ‘Are we Living in a More Violent Society?: A Socio-Historical Analysis of Interpersonal Violence in France, 1970s-Present’, *British Journal of Criminology*, 50 no. 5 (2010) pp. 808-829.

<sup>9</sup> Wieviorka, M. *Violence: A New Approach* (London: Sage, 2009)

<sup>10</sup> Sharpe, J. A. ‘Crime in England: Long Term Trends and the Problem of Modernisation’, in *The Civilization of Crime*, edited by Johnson, E & Monkkonen, E (Champaign, IL: University of Illinois Press

To explain this juxtaposition we turn to the theory of the ‘pseudo-pacification process’, which allows us to reveal the interactive cultural, psychosocial and socio-legal dynamics behind the rise of capitalism’s market economy.<sup>12</sup> Using the historical ‘crossover’ of the declining homicide and rising property crime rates as an empirical backdrop, the theory explains how physical violence was neither ‘eliminated’ nor ‘spiritualized’ in the cultural shift away from the bodily defence of land and family honour as Spierenburg<sup>13</sup> claims, but repressed and sublimated to perform two vital functions on behalf of the nascent market economy. First, to energize the sociosymbolic competition required by a burgeoning culture of consumption that was stimulated and diffused throughout the social body to increase market demand. Second, to evacuate as much physical violence as possible from civil society to protect property rights, lubricate the nodes and arteries of trade, legitimize exploitative business practice by reducing the likelihood of violent retribution, and thus clear the way for the rise of the market.<sup>14</sup>

In this article we will use this theoretical framework to further explore the significance of a number of legal transformations that took place during the Middle Ages – specifically, primogeniture and entail, labour and trading regulations, changing perspectives on usury and, of course, laws governing interpersonal violence as well as other forms of criminality – to the establishment and expansion of the early market economy, particularly in England. We will first outline the basic socio-historical processes that emerged after the fall of the Roman Empire, with an emphasis on the remarkably consistent decline of serious interpersonal violence since the late fourteenth century. With this empirical context in place our intention is to push beyond existing explanations to explore the ways in which socio-historical processes and ethico-legal regulation combine to open up a ‘third space’ between order and disorder.<sup>15</sup> In this third space physical violence is sufficiently pacified for a thriving market economy, but only in a way that allows for the expansion of the

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<sup>11</sup> See Wieviorka, 2009; Hall, S. *Theorizing Crime and Deviance: A New Approach* (London: Sage, 2012)

<sup>12</sup> Hall, S ‘Paths to Anelpis: Dimorphic Violence and the Pseudo-Pacification Process’ *Parallax* 6 no. 2 (2000) 36-53; see also, 2007; 2012; 2014

<sup>13</sup> Spierenburg, P, *A History of Murder: Personal Violence in Europe from the Middle Ages to the Present* (Cambridge: Polity, 2008)

<sup>14</sup> Hall, 2014

<sup>15</sup> *ibid.*

aggressive sociosymbolic competition necessary to boost the consumer demand required by the market.

## 2. After Rome

The prominent revisionist tendency of recent decades has portrayed the end of the Roman Empire as a gradual, relatively peaceful transition into the Renaissance rather than an abrupt and catastrophic dissolution caused, in large part, by internal decay and violent invasions.<sup>16</sup> It has become fashionable, notes Ward-Perkins<sup>17</sup>, to shy away from terms such as ‘crisis’, ‘collapse’, ‘decay’ and ‘destruction’ in favour of a more neutral lexicon that describes the influx of Germanic peoples as a co-operative, mutually beneficial settlement that played a vital role in refreshing the rather staid, repressive cultures of the Roman world. In this version of events the ‘settlers’ adopted the best of classical civilisation whilst bringing their own diverse and vibrant cultural practices, ideas and beliefs to the table in such a way as to push Western Europe into the comparative sophistication of the later Middle Ages.

While this is undoubtedly a rather seductive narrative, it arguably suffers from a rose-tinted revisionism that risks confining socio-historical analysis to the overly optimistic assertion that, as Voltaire’s character Professor Pangloss said, ‘everything is for the best in the best of all possible worlds’. In more practical terms, Ward-Perkins<sup>18</sup> argues, this gradualist narrative of peaceful transition fails to account for empirical data from the archaeological record, which suggests crisis, loss and a catastrophic collapse of living standards that affected almost every aspect of everyday life. Contrary to late-twentieth century revisionism, he asserts, the dissolution of the empire plunged large swaths of Western Europe into an extended crisis of governance, civility, economic productivity, technological sophistication and cultural vibrancy, such that post-Roman Europe – the period after about 400 AD – seems to have been a significantly less stable and developed place than it had previously been.

Drawing on a diverse body of archaeological field research, Ward-Perkins argues that the collapse of the Roman Empire led to a ‘disappearance of comfort’ from the remains of civil society. The Roman world, he notes, relied upon a complex and

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<sup>16</sup> Brown, P. *Late Antiquity* (Cambridge, MA: Harvard University Press, 1998); Bowerstock, G. *Late Antiquity: A Guide the Post-Classical World* (Cambridge, MA: Harvard University Press, 1999)

<sup>17</sup> Ward-Perkins, 2005

<sup>18</sup> *ibid.*

highly specialized system of skilled manufacturers producing goods to a high standard for a scattered market of consumers across the imperial territory. In effect, high quality goods along with people of skill and training flowed outward in the wake of advancing conquest, constructing the nodes and arteries of long distance production and trading networks, which included a supportive infrastructure of boats, roads, exchangeable coinage and wayside hostelries. When these international networks were severed by the 'influx' or 'invasion' of external populations, local infrastructures, particularly at the periphery, seem to have failed to pick up the slack such that:

[T]he post-Roman world reverted to levels of economic simplicity, lower even than those of immediately pre-Roman times, with little movement of goods, poor housing, and only the most basic manufactured items.<sup>19</sup>

In other words, it seems as though the benefits of long-distance trade and access to foreign 'experts' supplanted local skills and knowledge during the empire's outward march, but, when access to these networks was cut off, local systems could not maintain standards, and thus fell back to pre-Roman levels of cultural, social and technological sophistication. Throughout his work Ward-Perkins refers to a great many practical illustrations of a general deterioration following the collapse of imperial power, including the loss of productive capacity at the level of food production, shrinking and more divided, hostile and isolated populations, a loss of scale and complexity in the built environment and, perhaps most tellingly, a retrenchment of literacy and education, all of which seem to have fallen into a steep decline and stayed at a substantially reduced level for a number of centuries.

When taken as a whole, Ward-Perkins argues, the multifaceted decline of the post-Roman world can be legitimately described as the 'end of civilization' in the territory, by which he means an extraordinary loss of complexity and sophistication, economic production, socio-political interaction and cultural output.<sup>20</sup> This degeneration, he adds, is captured most clearly in the archaeological record, much of which paints a picture of a society reeling from a traumatic change of circumstances. In the wake of the collapse, high-quality mass-produced goods all but disappeared from everyday life

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<sup>19</sup> *ibid.* 137

<sup>20</sup> see also Turner, J. A. *The Collapse of Complex Societies*, (Cambridge: Cambridge University Press, 1988)

and, in some of the outer provinces, including the British Isles, there seems to have been a remarkable decline in general literacy as common written records – graffiti – all but disappeared. Furthermore, until the Norman building programme of the eleventh century, there also seems to have been an almost complete lack of large-scale stone building on the order of Hadrian's Wall not to mention the decline of ceramic tile production, which led to a decrease in cleanliness and an increase in diseases.

For our purposes, however, by far the most significant aspect of this socio-cultural deterioration is the explosion of everyday physical violence that appears to have taken place within the space evacuated by Roman imperial power. The empire enjoyed a moderate degree of success when it came to reducing the prevalence of interpersonal violence in everyday life. Success was achieved partly by sublimating and redirecting violence into armed conquest of land occupied by external 'others', sociosymbolic competition, thoroughgoing behavioural codes, relatively fluid and competitive class structuring and burgeoning blood sports but also as a result of combining political complexity with a modicum of political stability in the Pax Romana system. However, the same most definitely cannot be said for Dark Age and early Middle Age societies across Europe.

While it is always rather difficult to clearly identify specific features of individual lives at such a remove from the original events, it seems as though one of the most notable features of post-Roman society was an explosion of physical brutality in everyday life and its establishment as a foundation for social relations.<sup>21</sup> The extent to which the collapse of the empire and its networks of social, political, cultural and economic interdependencies opened up a power vacuum that allowed physical violence to bleed back into everyday life is, of course, hotly debated. Even if we leave the headline events – the Viking raids of the eighth century and the Norman Conquest of 1066 – to one side, however, there is a great deal of evidence which suggests that the European societies of the thousand years or so following 400AD had to contend with deeply problematic, socially destructive, culturally degenerative and economically dysfunctional levels of savagery and instrumental violence. In his

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<sup>21</sup> Halsall, G. 'Violence and Society in the Early Medieval West: An Introductory Survey' in *Violence and Society in the Late Medieval West*, edited by Guy Halsall (Woodbridge: Boydell & Brewer, 1992), 1-45; see also Maddern, 1992

discussion of early English history and criminal law, for example, Hibbert<sup>22</sup> points to a number of attempts to establish monetary compensation as an alternative to blood feuds and tit-for-tat cycles of interpersonal violence, but notes that any such legal system was hampered by the difficulties of exercising legitimate administrative power over large geographical areas. Even the brutal governance of the Norman invaders failed, he notes, to restore anything that could be called a system of law and order, and this failure occurred despite shifting penalties significantly in the direction of bodily mutilation.

Marauding gangs of brigands, Hibbert<sup>23</sup> suggests, operated with absolute impunity, often seizing control of whole towns and large areas of the countryside for years at a time, or, in one particularly spectacular escapade, managing to break into the Royal Treasury at Westminster and make off with a sizeable portion of its content. This kind of gang rule resulted in a profusion of mini-kleptocracies in which violence, although it may have been used to establish and maintain power and domination, was fixated on practical economic concerns such as securing the proceeds of the import and export trade, confiscating and counterfeiting money, and kidnapping travellers for hefty ransoms. These acquisitive practices were reinforced by a conspicuous propensity for violence and torture. Even after Edward I's reorganisation of the justice and control system in the late thirteenth century, in northern areas at a greater distance from seats of power this sort of constant threat persisted into the sixteenth century. The Border Reivers, for instance, were a fickle alliance of violent familial clans from the Anglo-Scottish borderlands with little interest in politics, agriculture or craft production but disposed to prey on local populations and extract tithes on threat of violence from those involved in agricultural production and commercial transit between the two fledgling nations.<sup>24</sup>

Accordingly, the violence of early medieval life, we might suggest, reflects nothing so much as minimal respect for law and the absence of centralized authority with the capacity to ensure compliance. What operated in their place was a set of autonomous localized cultural codes that placed great emphasis on violence as a principal means

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<sup>22</sup> Hibbert, C. *The Roots of Evil: A Social History of Crime and Punishment*, (Stroud: Sutton Publishing, 2003 [1963])

<sup>23</sup> *ibid.*

<sup>24</sup> Fraser, G. *The Steel Bonnets: The Story of the Anglo-Scottish Border Reivers* (London: HarperCollins, 2012)

of dispute settlement and economic acquisition. Just as technological sophistication, economic production and cultural vibrancy fell back to something resembling pre-Roman forms, so did the social structures and norms that had succeeded in reducing everyday violence. Consequently, social relations during the Dark and early-Middle Ages also came to resemble those of a darker, prehistoric human past.<sup>25</sup>

In the aftermath of the Roman Empire's precipitous collapse, and for the better part of a millennium afterwards, myriad forms of brutal physical violence blighted European populations. Anyone wishing to travel between growing towns and cities had to contend with "brigands who continued to plague open highways, the private noble wars which ravaged the countryside, or even the pirates who corrupted the nearby sea".<sup>26</sup> What's more, it seems likely that there was often a palpable sense of fear and insecurity even within the comparative safety of town walls. Early Medieval streets seem to have been places of quotidian dispute settlement that frequently descended into "brawls, beatings with fists and knives, and vengeful attacks".<sup>27</sup>

While it is almost impossible to put reliable figures on the prevalence of interpersonal violence in the distant past, there is a great deal of evidence to suggest that the surface relief of post-Roman society was frequently and visibly affected by physical conflict. It is not the case that this was a millennium of constant militarized infighting and attack from without. There were undoubtedly periods of relative calm, but, equally, the threat of everyday violence never seems to have been far below the surface. The social order of the Vikings, for example, appears to have been built around a 'spiral of violence' based on the power afforded by heritable property and the various clans' attempts to acquire as much as possible, which resulted in cycles of feuds and reprisals.<sup>28</sup> When the Normans invaded Britain some parts seem to have capitulated relatively quickly, but in the north rival groups entered into a long-running and bitter struggle for Northumbrian sovereignty, in which the introduction of a new power bloc

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<sup>25</sup> Armit, I. 'Violence and Society in the Deep Human Past', *British Journal of Criminology*, 51 no. 3 (2011) 499-517; Nivette, A. 'Violence in Non-State Societies: A Review' *British Journal of Criminology*, 51 no. 3 (2011) 578-598

<sup>26</sup> Skoda, S. *Medieval Violence: Physical Brutality in Northern France, 1270-1330* (Oxford: Oxford University Press, 2013), 51

<sup>27</sup> *ibid.* 50

<sup>28</sup> Morris, G. 'Violence and Late Viking Social Order' in *Violence and Society in the Late Medieval West*, edited by Guy Halsall (Woodbridge: Boydell & Brewer, 1992) 141-156



led only to further conflict. In Speight's<sup>29</sup> terms, "many of the assassinations and massacres that litter the region's history can be attributed to the imposition of non-customary dues and practices" even to the extent that the rebel factions invited in and sided with an invading Danish army. It took the infamous 'Harrying of the North' – the decision made in 1070 by William the Conqueror to burn northern settlements, destroy crops and generally pillage the area – for the Norman powers to gain any measure of control. Even with their lordship established and the rebel forces beaten into submission, however, Norman governance often proved quite spectacularly ineffectual. In the course of the next two or three centuries, for example, they were forced, time and again, to announce new measures meant to combat brigandage and reduce the prevalence of marauding gangs of armed bandits, none of which seem to have enjoyed much success.<sup>30</sup>

With the above in mind we can risk the assertion that Dark Age and early Medieval England seems to have been a relatively violent place. Yet this only leaves us with the obvious question surrounding the purpose and function of overt violence in post-Roman society. Cowell<sup>31</sup> suggests that the upper end of feudal society was based on two conjoined principles of 'gift giving' and 'violent taking'. The purpose of both seems to have been to establish a degree of reciprocity within the aristocracy and, more broadly, the chivalric class of warriors on whom the former based their power. Gifts necessarily came laden with a debt accrued from the act of acceptance, such that interrelations of reciprocity and obligation could be replicated without resort to the interference of centralized authority.<sup>32</sup> In much the same way, an act of violence – a raid, an ambush, a declaration of private war – came laden with a return game, an act of vengeance that further served to enshrine reciprocity within the aristocracy whilst simultaneously allowing them to parasitize the lower orders by extracting protection money/resources in the form of tribute. The capacity to deploy violence or to have others do so at individual behest, in other words, was a key aspect of social relations

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<sup>29</sup> Speight, S. 'Violence and the Creation of Socio-Political Order in Post Conquest Yorkshire' in *Violence and Society in the Late Medieval West*, edited by Guy Halsall (Woodbridge: Boydell & Brewer, 1992) 157-174

<sup>30</sup> see Halsall, 1992; Hibbert, 2003

<sup>31</sup> Cowell, A. *The Medieval Warrior Aristocracy: Gifts, Violence, Performance and the Sacred*, (Woodbridge: D S Brewer, 2007)

<sup>32</sup> *ibid.*

within feudal society even to the extent, as Eisner<sup>33</sup> observes, that it determined exactly who held kingship across Europe.

With closer attention to the less powerful classes in the European social order, Skoda makes a similar point in relation to street violence, which seems to have functioned as a basic form of social ordering that allowed for the generation and maintenance of:

...self-image and one's place within the community... [and] notions of honour street violence protected the 'psychic property' of the individual, his or her sense of self and place within social networks.<sup>34</sup>

In other words, if individuals were to hold onto property, maintain a sense of honour and prevent themselves from being cheated and dispossessed by their neighbours, a propensity for physical violence seems to have been a necessary and a socially legitimate requirement. At just about every level of the social order violence appears to have functioned, in the absence of a centralized authority, as a primary means of acquiring and preserving security, wealth and status through the bodily defence of land, property and honour. It is this underlying principle, more than any other, which characterizes the basal structure of the feudal order to the extent that Sharpe<sup>35</sup> is able to point to a society built on the violence of 'hard men' "accustomed to fighting as a normal part of life".

If we take all of the above at face value it is entirely likely that the dark shadow of post-Roman Britain, particularly the early part of the Middle Ages, provided at least some of the impetus for Thomas Hobbes's<sup>36</sup> idea of a pre-social 'state of nature' lacking any sort of inherent inclination to pacification and plagued by both exploitative and defensive brutality. Violence, he argued, was used to gain control over the lives of other people and their property, used in the defence of honour and property, and often arose at the slightest provocation or perception of threat. In other words, Hobbes seems to be harking back to the type of society we have described thus far – a society in which, as Gurr puts it:

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<sup>33</sup> Eisner, M. 'Killing Kings: Patterns of Regicide in Europe, AD 600-1800' *British Journal of Criminology* 51 no. 3 (2011) 556-577

<sup>34</sup> Skoda, 2013: 56

<sup>35</sup> Sharpe, 1996: 18

<sup>36</sup> Hobbes, T. *Leviathan*, (Oxford: Oxford World Classics, 2008 [1651])

[M]en were easily provoked to violent anger, and were unrestrained in the brutality with which they attacked their opponents. Interpersonal violence was a recurring fact of rural and urban life.<sup>37</sup>

While the early estimates on which these initial observations are based are inevitably rather imprecise, the improved record-keeping practices of the later Middle Ages in Europe, and, in England from the beginning of the Tudor period, allow for a clearer understanding of historical rates and trends of violence. The increased availability of empirical data in the form of written records has allowed a number of scholars<sup>38</sup> to observe relatively high levels of interpersonal violence into the fourteenth and fifteenth centuries, followed by a long-term decline up to the middle decades of the twentieth century. Eisner<sup>39</sup> identifies the middle decades of the fourteenth century as a high point for the level of overt violence in English life, after which murder rates and, by implication, lesser forms of violence began to drop off. Something significant seems to have changed during the middle part of the fourteenth century that initiated an extended process in which overt everyday violence was eventually all but extinguished from English public life, certainly for the majority who managed to avoid locales of acute marginalisation.<sup>40</sup>

### 3. Civilization or Pseudo-Pacification?

In many cases accounts of the long-term decline of physical violence in Western Europe rely quite heavily on Norbert Elias's<sup>41</sup> concept of a 'civilizing process', even to the extent, as Mares<sup>42</sup> notes, that there seems to be a broad agreement that this

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<sup>37</sup> Gurr, T. 'Historical Trends in Violent Crime: A Critical Review of the Evidence' in *Crime and Justice* 3, edited by Michael Tonry & Norval Morris (Chicago, MA: University of Chicago Press, 1981) 307

<sup>38</sup> see, for instance, Gurr, *ibid.*; Gurr, T. 'Historical Trends in Violence Crime: Europe and the United States' in *Violence in America, Vol. 1: The History of Crime*, edited by Ted Gurr, (Thousand Oaks, CA: Sage); Eisner, M. 'Modernisation, Self Control and Lethal Violence: Long-Term Dynamics of European Homicide Rates in Theoretical Perspective' *British Journal of Criminology*, 41 no. 4 (2001) 618-638; Eisner, M. 'Secular Trends in Violent Crime: Evidence and Theoretical Interpretations', *Crime & Justice: An Annual Review*, 31 (2003) 83-142; Spierenburg, P. 'Faces of Violence: Homicide Trends and Cultural Meanings: Amsterdam, 1431-1816', *Journal of Social History* 27 no. 4 (1994) 701-17; Spierenburg, 2008

<sup>39</sup> see Eisner, 2001

<sup>40</sup> see Taylor, I *Crime in Context: A Critical Criminology of Market Societies* (Cambridge: Polity, 1999); Hall, S., Winlow, S. & Ancrum, C. *Criminal Identities and Consumer Culture: Crime, Exclusion and the New Culture of Narcissism*, (Cullompton: Willan, 2008); Winlow, S & Hall, S. *Rethinking Social Exclusion* (London: Sage, 2013)

<sup>41</sup> Elias, 1994 [1939]

<sup>42</sup> Mares, D. 'Civilization, Economic Change, and Trends in Interpersonal Violence in Western Societies', *Theoretical Criminology* 13 no. 4 (2009) 419-449

aging work provides us with the most insightful narrative yet available. While a full discussion of the fine details of Elias's thesis is well beyond the scope of a single article it is perhaps best that we at least re-familiarize ourselves with its basic premises.

In the long transition from the Middle Ages to early 'modernity' a series of complex and interlocking psychosocial transformations supposedly led, all but inexorably, to the minimisation of interpersonal violence across Western Europe. The 'civilization' of English society, for instance, Elias argued, relied substantially on the growing power and dominance of the Plantagenet monarchy during the thirteenth and fourteenth centuries, especially their ability to monopolize the means of violence. This centralisation and monopolisation of the legal capacity of monarchical states to do harm allowed them to secure increasingly pacified social interaction across progressively larger portions of their territories, which facilitated a general upturn in commerce, trade and, crucially, taxable income. The interest shown by elites allowed for the growth and maintenance of structural complexity in the form of bureaucratic regulation – particularly legal codes – and the kind of broad-based socio-economic interdependencies last seen during the heyday of the Roman Empire. At this point, Elias suggests, the process effectively assumed a life of its own as the move away from the anxious, defensive and often self-aggrandizing deployment of violence began, over a number of generations, to change the way that people thought, felt and interacted such that the population at large lost any direct acquaintance with their capacity for violence, which became repressed and subsumed beneath culturally maintained and reproduced behavioural codes. Beginning in the courtly upper reaches of the social structure, Elias held, these codes diffused outwards throughout everyday culture to be psychologically internalized and reproduced. The abandonment of everyday hostility and physical violence allowed the development of 'figural' networks of interdependencies between individuals acting in the various nodes and arteries of socioeconomic life.

While these ideas undoubtedly go some way towards explaining the historical decline of overt violence in Western European society, however, there are a number of significant problems at the heart of the thesis. They congregate around the

assumptions of naturalism, teleological evolutionism, internal cohesion and the vaguely transcendental nature of 'interdependencies'. In Elias's terms:

The individual is compelled to regulate his conduct in an increasingly differentiated, more even and more stable manner... characteristic of the psychological changes in the course of civilization: the more complex and stable control of conduct is increasingly instilled in the individual... a self-compulsion that he cannot resist even if he consciously wishes to. The web of actions grows so complex and extensive, the effort required to behave 'correctly' within it becomes so great, that beside the individual's conscious self-control an automatic, blindly functioning apparatus of self-control is firmly established.<sup>43</sup>

In other words, the core of Elias's thesis relies on a repeated assertion that interdependence between people and communities necessarily and all but inevitably fosters civilized, physically non-violent sensibilities in a way that reflects a sort of 'blind' and 'evolutionary' dynamic drive toward increasingly pacified forms of social interaction. Within the confines of his work it is almost as if the development of social, cultural, economic and political complexities, along with the inter-relationships they entail, lead inexorably to the development, maintenance and reproduction of 'civilized' behavioural codes. What this does, however, is to gloss over the relationship between internal and external worlds in a way that largely fails to provide a clear and convincing explanation for how we might get from what Elias calls 'sociogenesis' – the generation and proliferation of objective social conditions and relations – to the subjective internalisation entailed by 'psychogenesis'. In positing such a blind drive toward 'civilization', Elias provides a teleological account of pacification, which mistakes effect for drive, and, as a result, overstates and yet oversimplifies one of the defining features of the long run of European history.

If we consider such a linear teleological thesis in light of the general continuation – if not outright escalation<sup>44</sup> – of brutality in European systems of punishment, along with the central role played by exploitation and primitive accumulation within economic systems steadily moving in the general direction of the industrial revolution, the connection between social interdependence and pacification might not be quite as

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<sup>43</sup> Elias, 1994: 445-446

<sup>44</sup> Gatrell, V. *The Hanging Tree: Execution and the English People, 1770-1868*, New Edn, (Oxford: Oxford University Press, 1996)

‘stable’ or dependable as the original work would tend to suggest.<sup>45</sup> Indeed, throughout history, the artistic, philosophical and technological apexes of civilisations have been closely associated with various forms of violence and exploitation. In much the same way, the centralisation of the capacity for ‘legitimate’ violence in the hands of the state was never quite as effective, legitimate or neutral as Elias posits. The late Medieval and Tudor monarchical states, just like more contemporary examples of technocratic stewardship in relation to global markets,<sup>46</sup> often engaged in brutality in order to fulfil predatory political and economic aspirations largely immaterial and indeed sometimes damaging to the everyday lives of subject populations.

Furthermore, this attribution of neutrality, along with the underlying naturalist emphasis, points us to the deepest problems in Elias’s thesis; two ontological flaws deprive the inhabitants of modernism’s relatively pacified social order of a certain amount of their subjectivity. First, it is far too easy to explain away a major behavioural trend such as pacification by psychologising and naturalising it, and positing it as an inexhaustible teleological drive in the movement of history. What this does is to deprive social action of dialecticism, of the push and pull between individuals and their context. Second, the suggestion that ‘civilisation’ might be a natural corollary of growing interdependencies is to fall into the trap of over-socialising the concept of pacification by associating it with factors all but entirely external to the actor’s consciousness. The formulation that growing interdependence between individuals and communities maintained by the centralising power of the state provided a fertile seedbed for the proliferation of emotional empathy, which, over decades and centuries, coalesced into a natural psychosocial aversion to violence and bloodshed is just too neat. It largely ignores the vagaries and contingencies of thinking subjects trying to make their way through life as best they can, particularly in terms of their fears and passions, desires and frustrations. Equally, it ignores the instability and often hostile competitiveness that characterized the capitalist socio-economic environment that was supposed to act as the foundation for the psychogenesis of pacified sensibilities.<sup>47</sup>

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<sup>45</sup> Hall, 2014

<sup>46</sup> Rancière, J. *Hatred of Democracy*, (London: Verso, 2006); Galbraith, J. *The Predator State: How Conservatives Abandoned the Free Market and Why Liberals Should Too*, (New York, NY: The Free Press, 2008)

<sup>47</sup> Hall, 2000; 2007

If Elias's schema is to be taken at face value, his assertion of growing empathy within and between populations must also contend with a less commonly discussed but equally important counter-trend – the observation that 'crime' in the broad sense of interpersonal violation seems not to have declined in a 'civilized' context so much as mutated and changed with the times. It is in this context, for instance, that Sharpe<sup>48</sup> points to "a shift from 'feudal' criminality based on violence... to a 'modern' criminality based on property offences" between the late Middle Ages and the nineteenth century. Inevitably, this suggestion is rather difficult to substantiate. Nevertheless, amongst historians of crime there seems to be a general acceptance that the processes which reduced the level of overt violence in the public spaces of European life seem to have been matched by a proliferation of non-violent, abstract forms of criminality appearing throughout the social structure.<sup>49</sup>

This insight allows us to begin moving beyond the naturalistic bounds of Elias's thesis toward a more nuanced analysis of historical change in the combined fields of political economy and psychosocial pacification. If we acknowledge that the long-term decline in everyday physical violence coincided with the emergence of urban, industrial, commercial and, ultimately, capitalist societies then we must also note that the accompanying process of marketization provided fertile ground for the development of sensibilities, values and meanings conducive to and called forth by the new political economy.<sup>50</sup>

In light of the likely empirical crossover between violent and abstract criminality, however, a number of current theorists, particularly Michel Wieviorka<sup>51</sup> and Laurent Mucchielli<sup>52</sup>, have begun to move away from Elias's rather Whiggish and teleological 'civilizing process' toward the essential task of locating pacified emotional dispositions within a properly dynamic and interactive understanding of contemporary political economy. That is to say, within the interplay between grand scale socio-historical transformations and the ways in which they structure and mould everyday

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<sup>48</sup> Sharpe, 1996: 20; see also Hibbert, 2003 [1963]

<sup>49</sup> *ibid.*; Sharpe, J. A. 'Crime, Order & Historical Change', in *The Problem of Crime*, 2<sup>nd</sup> Edn, edited by John Muncie & Eugene McLaughlin (London: Sage, 2001); Wilson, C. *A Criminal History of Mankind*, New Edn, (London: Mercury, 2005); Hall, 2012

<sup>50</sup> Hall, 2007

<sup>51</sup> Wieviorka, 2009

<sup>52</sup> Mucchielli, 2010

life as the material and symbolic foundations for aspirations, beliefs, desires, norms, values and all manner of sensibilities.

What this means, however, is that the physical violence employed as a social ordering technique throughout the social structure of early Europe did not decline because the prevailing values and sensibilities of the age became more orientated towards pacification. It came instead from a dualistic and mutually reinforcing economic need within emerging market economies. Market economies cannot expand in socioeconomic systems structured and driven by either *physical violence* or *altruism*.<sup>53</sup> The expansion of the production and circulation of commodities depended on the contemporary state's ability to protect property rights and economic activity by reducing violence across sufficiently large geographical areas. This was largely achieved through systematic shifts in law and cultural values that repressed and privatized altruism, but simultaneously repressed and sublimated the destructive violence that would normally increase in a non-altruistic culture into a symbolically aggressive yet physically pacified competition for the symbols of wealth and status in Europe's emergent consumer culture.<sup>54</sup>

In other words, pacification was – before individuals became accustomed to its codes and internalized its sensibilities – initially a functional by-product of political-economic change, specifically the development of early market economies and their basic requirement to repress physical violence and simultaneously encourage the individual's interest and participation in pacified rule-bound sociosymbolic competition and economic exploitation; to encourage functional aggression yet, at the same time, to keep a lid on the situation and prevent either pre-emptive or reactive violence becoming physical by expanding systems of governance and control. In other words, pacification emerged as a functional practice before it became culturally established and psychologically internalized. Contra Foucault,<sup>55</sup> control of the body's passions – 'biopower' or 'biopolitics' – seems to have been predominantly focused on *violent and altruistic* interactions rather than political and sexual sentiments.<sup>56</sup>

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<sup>53</sup> Hall, 2014

<sup>54</sup> Hall, 2012

<sup>55</sup> Foucault, M. *The History of Sexuality, Volume 1: The Will to Knowledge*, New Edn, (London: Penguin, 1998); Foucault, M. *The Order of Things: Archaeology of the Human Sciences* (London: Routledge, 2001); Foucault, M. *The Archaeology of Knowledge* (London: Routledge, 2002)

<sup>56</sup> Hall, 2012; 2014



In this way, the theory of the pseudo-pacification process opens up the possibility of more rewarding explanations for the long term decline of physical violence in Western Europe. It is rooted in material political economy rather than Elias's<sup>57</sup> woolly, evolutionary orientation towards civic peace on the basis of increasingly refined empathic sensibilities, or Foucault's<sup>58</sup> shifts in discursive and classificatory schema and normalized subjectivity that occur for no discernible reason other than 'discipline'. 'Discipline', 'classification' and 'discursive production' are simply the means of shaping and controlling a potent pre-existing libidinal drive that at its root is located in a rule-bound system of stimulation and pacification and activated by increased social anxiety, individual freedom from social obligations, and the commercialisation of consumer desires.<sup>59</sup>

The concept of 'pseudo-pacification' locates the decline of interpersonal violence specifically within the unstable and indeterminate context of market economies in a dynamic relationship with social and individual subjectivity. The sociological implications of this suite of concepts have been dealt with in an embryonic but growing criminological and sociological literature that is largely beyond the remit of this piece.<sup>60</sup> What we want to do here is to take these insights in a slightly different direction by using them as a starting point for a socio-historical analysis of the development of important aspects of the English legal system. It is to this end that we now turn our attention.

#### **4. The Third Space of Orderly Disorder**

The process of repairing England's social order after the depredations of the Dark Ages and early Middle Ages – most notably the disruption and violent aftermath of the Norman invasion – began with the coronation of Edward I in 1274. Upon his accession he immediately began a far-reaching programme of legal reform that eventually replaced Feudal power with something a little closer to modern

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<sup>57</sup> Elias, 1994 [1939]

<sup>58</sup> Foucault, M. *Discipline and Punish: The Birth of the Prison* (London: Penguin, 1991)

<sup>59</sup> Hall, 2012; 2014

<sup>60</sup> Moxon, D. 'Consumer Culture and the 2011 'Riots'', *Sociological Research Online*, 16 no. 4 (2011); Briggs, D. *Deviance and Risk on Holiday* (Basingstoke: Palgrave MacMillan, 2013); Winlow, S. 'Trauma, Guilt and the Unconscious' in *Violence and Society: Toward a New Sociology*, edited by, J. Kilby & L. Ray, (Oxford: Wiley/Blackwell, 2014); Horsley, M. 'The 'Death of Deviance' and the Stagnation of Twentieth Century Criminology', in *The Death and Resurrection of Deviance*, edited by M. Dellwing, J. Kotarba & N. Pino (New York, NY: Palgrave MacMillan); Horsley, M. *The Dark Side of Prosperity: Late Capitalism's Culture of Indebtedness*, (Farnham: Ashgate, 2015)

governance.<sup>61</sup> In the first few decades of his reign, spurred by recognition that the prevailing incidence of interpersonal and group violence as a structural ordering technique could not remain unchecked, he set about codifying and adding weight of statute to a host of pre-existing customs in ways that were meant to enhance the enforcement of pacification. If we were looking for a legal cornerstone of modernity's embryonic social order we could do much worse than the 1283 Statute of Winchester, which attempted, under a system of reticular command and delegation, to refurbish and revitalize traditional practices of mutual responsibility for the detection and prosecution of crimes committed within defined geographical areas.

What this involved was, initially, a set of provisions that strengthened the longstanding requirement that all men should have access to some description of weapon, the exact nature of which depended on social rank – knights were to be availed of swords, armour and horses, commoners bows and arrows – supplemented by an administrative caste of 'royal officers' empowered to carry out public inspection.<sup>62</sup> With these arms, local watches were to be kept and, in the event of an offence, the bulk of the able-bodied male population were expected to turn out in pursuit of suspects. Furthermore, town gates were to be closed during the hours of darkness and no strangers permitted entry, thereby effectively subjecting any sizeable settlement to an after-dark curfew. The new system engaged in renewed attempts to humanize and pacify the English countryside by limiting brigands' capacity to ply their trade and stipulating that hedges be coppiced for 200 feet on either side of public highways to reduce the possibility of ambush, in what resembles a thirteenth century form of situational crime prevention.<sup>63</sup> In addition, it also specified what was to be done if these practices failed to prevent or convict, such that "the victims of robbery would henceforward be able to claim restitution from the hundreds [a contemporary administrative unit of population] in which they fell among thieves".<sup>64</sup>

In this fashion large parts of the legal system that were established in the wake of Edward's reign seem to have adopted a similarly distributivist emphasis in an attempt to reinstate a modicum of altruism and social justice in everyday life, but were

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<sup>61</sup> Hibbert, 2003 [1963]

<sup>62</sup> Summerson, H. 'The Enforcement of the Statute of Winchester, 1285-1327' *Journal of Legal History*, 13 no. 3 (1992) 232-250

<sup>63</sup> Walsh, D. 'The Obsolescence of Crime Forms' *Crime Prevention Studies* 2 (1994) 149-163

<sup>64</sup> Summerson, 1992: 232

organized more by *reactive legal practices* than *proactive cultural values*. With the usual caveats around attributing specific thoughts to the inhabitants of the distant past, the early English state seems to have hit upon the idea that pacification relied on the legal system's capacity to reproduce as reactive practices at least some degree of the practical mutuality that had existed before. What the tradition amounted to was simply a series of mutually reinforcing statutory provisions and customary assumptions – including restrictions on trading activities, the prohibition of usury and limitations on both minimum and maximum wages to ensure 'sufficient livelihood' – that set about both limiting individuals' capacity to exploit and prey upon each other whilst ensuring a reasonably fair distribution of economic participation and reward from such abstinence.<sup>65</sup> If we take contemporary usury legislation, for instance, the church-led rejection of 'lending for increase' – charging interest – was based largely on the assumption that it was a distinctly predatory craft, which amounted to "an immoral means of gaining something from nothing... [making] money from money without labour or service and at the expense of the poor and needy".<sup>66</sup>

By way of contrast, medieval regulation of wages and livelihood seems to have tried to increase pecuniary rewards for even the lowest forms of labour such that wages appear to have doubled between 1340 and 1400.<sup>67</sup> While it would be negligent not to acknowledge that at least some of this comparative generosity can be traced to a reduced labour supply after the first wave of bubonic plague this, as Dyer also notes, does not tell the whole story as there had already been movements in this direction prior to the epidemic. What this regulatory system produced, however, was a diffusion and democratisation of legally-sanctioned control, which set in motion a gradual diminution of everyday violence, repressed by diffuse social pressure that saw as its reward the material benefits accruing from the pacification and artificial reactive altruism that facilitated the booming pre-capitalist distributivist economy of the late fourteenth century.<sup>68</sup> In this way, the origins of the pseudo-pacification process, contra

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<sup>65</sup> Hall, S. & Winlow, S *Revitalizing Criminological Theory: Toward a New Ultra-Realism*, (London: Routledge, 2015)

<sup>66</sup> Davis, J. *Medieval Market Morality: Life, Law & Ethics in the English Marketplace, 1200-1500*, (Cambridge: Cambridge University Press, 2012) 65; see also, Graeber, D. *Debt: The First 5,000 Years*, (New York, NY: Melville House, 2011)

<sup>67</sup> Dyer, C. *Everyday Life in Medieval England*, London: The Hambledon Press, 1994); see also, Dyer, C. *Standards of Living in the Later Middle Ages: Social Change in England c. 1200-1520*, Rev. Edn., (Cambridge: Cambridge University Press, 1989)

<sup>68</sup> see Hall, 2014

Durkheim,<sup>69</sup> betray the roots of social order within the enculturation of legal codes rather than the legalisation of cultural codes.

With the cautiously administered delegation of crime control to the citizenry, late medieval social regulation paved the way for more effective responses to the problems of banditry and brigandage that plagued English society in the decades prior to the reign of Edward I. While these systems inevitably elicit the usual caveats around their ultimate effectiveness,<sup>70</sup> they at least went some way to formalising crime control and expanding the reach of the criminal justice system such that we can reasonably talk about a significantly safer territory with increased scope for production and trade. In conditions of greater security, the more enterprising sections of the general population were able to capitalize on the increased viability of inter-urban trade to begin establishing the sort of sophisticated trading networks that rely on the capacity to move goods, money and people through the developing nodes and arteries of a nascent market system. The pacification of society in other words took place within, around and even as a corollary of a process of commercialisation that itself relied on concomitant and complimentary practices of sovereignty, discipline and control as well as the everyday beliefs and aspirations of an already quite individualistic, profit-minded and increasingly pacified yet rather symbolically aggressive entrepreneurial population.<sup>71</sup> It is quite likely that at this point we can detect the beginning of the rise of what Priestland<sup>72</sup> calls the ‘merchant caste’ to a position of prominence amongst the ruling elite as it displaced the ‘soldier’ and ‘sage’ castes which administered the reproduction of, respectively, organized physical violence and cultural codes and values.

However, the integral pseudo-pacification associated with the development of market economies was not reliant on the total displacement of values by legal codes. It was also fuelled, at least in part, by selected pre-existing practices and beliefs within the general population. Socio-legal codification of evolving and diffusing customs that revolved around commerce and entrepreneurship – which increased markedly from

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<sup>69</sup> Durkheim, E. *The Division of Labour in Society*, (New York, NY: The Free Press, 1997 [1893])

<sup>70</sup> Hibbert, 2003 [1963]

<sup>71</sup> Macfarlane, A. *The Origins of English Individualism: The Family, Property and Social Transition*, (Oxford: Basil Blackwell, 1979); see also Hall, 2012

<sup>72</sup> Priestland, D. *Merchant, Soldier, Sage: A New History of Power*, (London: Allen Lane, 2012)

the tenth century as new trade routes were opened up<sup>73</sup> – permitted, compelled and inspired people to internalize and embody such ideas to an even greater extent. If we turn our attention to, for example, Dyer's<sup>74</sup> work on everyday life in Medieval England it is immediately apparent that the nation already contained a growing number of labourers, merchants and skilled tradesmen accustomed to an individualistic, enterprising, 'go-getting' lifestyle within local communities. In the course of the twelfth through fifteenth centuries, however, the increased viability of inter-urban trade, along with other complementary additions to the English legal system, allowed what had been quite disparate and disconnected interests to become something much closer to a proto-bourgeoisie in terms of the ambitious, individualistic beliefs and understandings they held about themselves and the world around them.<sup>75</sup>

It is unlikely that Norman traditions as a whole were entirely alien to the inhabitants of post-Roman England, but there are significant differences between these customs and those favoured by the Plantagenet reform programmes. The Feudal system in place prior to and immediately after the conquest relied on a system of lordship, land title and tenure that provided much of the economic basis for early English society. A large part of the population made their livelihood as tenant farmers on land granted to them by the aristocracy, which came with mutual expectations. The tenant owed tithes and other stipulated services such as stewardship of an allotment of parish land as well as allegiance to none but the king, whilst the lord ran a kind of protection racket, guaranteeing security of tenure against all comers.<sup>76</sup> This bargain has much in common with a legal contract to the extent that it came with a number of stipulations as to exactly what each party could expect of the other. One of the major benefits on the tenant's side was the right to pass land onto his descendants within a system of coparcenary entail, meaning equal partition between surviving sons.<sup>77</sup> While there

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<sup>73</sup> McKendrick, N., Brewer, J. & Plumb, J. H. *The Birth of a Consumer Society: The Commercialization of Eighteenth-Century England* (Bloomington, IN: University of Indiana Press, 1982)

<sup>74</sup> Dyer, 1994; see also Dyer, C. *Making a Living in the Middle-Ages: The People of Britain, 850-1520*, (London: Yale University Press, 2009)

<sup>75</sup> Wood, E. M. *The Origin of Capitalism: A Longer View*, (London: Verso, 2002)

<sup>76</sup> Tilly, C. 'War-Making and State-Making as Organized Crime', in *Bringing the State Back In*, edited by, P. Evans, D. Rueschemayer & T. Skocpol, (Cambridge: Cambridge University Press, 1985)

<sup>77</sup> Baker, J. *An Introduction to English Legal History*, 4<sup>th</sup> Edn, (Oxford: Oxford University Press, 2002)

were a few issues with these provisions, not least of which the problem of dividing up plots of land already providing little more than bare subsistence, they did have one distinct advantage within early Norman social order: they maintained and even bolstered the nuclear family as a basic protective unit against the brutal violence that permeated the Feudal world.

With the introduction in the late thirteenth century of the twin laws of free alienation and primogeniture, the emphasis of the English common law began to shift into a slightly different, more individualistic frame. In the former case, the holders of title gained the capacity to sell up or otherwise dispose of property without their heirs' consent, such that children could be left penniless with no birth-right. If the parental generation failed to specify where their property would go, the new law of primogeniture came into effect, by which the eldest son would get everything, potentially leaving any siblings destitute. Yet, as Macfarlane<sup>78</sup> puts it, "even the eldest son had nothing except at the wish of his father or mother". What this did was to introduce a level of unpredictability into the transmission of property and wealth, which in turn instigated a form of social mitosis, or, more figuratively, a 'socio-economic tumour'<sup>79</sup> in which relatively well-heeled but by no means wealthy families – it is worth noting that England was the only European nation not to limit primogeniture to the aristocracy – started producing second and third siblings who would have to work hard and independently to replicate the quality of their childhood lifestyle. In other words, it created a process by which English society, based on a peculiar difference from the rest of Medieval and Early Modern Europe, began to spawn and diffuse outwards new generations of anxious proto-entrepreneurs with greater impetus toward commercial approaches to everyday life, which then began to displace and subsume the ethical principles reproduced by the relatively short-lived distributivist system.

In this way we start to shed a little more light on the role of legal regulation and social change in the long term trajectory of English and later, as trading arteries were once again pacified and opened up, mainland European societies in terms of the minimisation of interpersonal violence and its socio-historical crossover with non-violent, abstract criminality. It is interesting to note that continental Europe, despite

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<sup>78</sup> Macfarlane, 1978: 83

<sup>79</sup> see Hall, 2014

its growing trade routes, the birth of the accounting system in Milan and the eventual establishment of Amsterdam as the hub of sea trade, was overtaken by England in the run-up to industrial capitalism. Running alongside the standard reasons is the comparative failure of European territories to pacify their trade routes and rapidly diffuse the norm of sociosymbolic competition in place of physical violence. What's in train here is not, as Elias<sup>80</sup> held, a 'blind', 'evolutionary' drive toward social refinement and interpersonal empathy but the result of dynamic tension between pacification and stimulation, between socio-legal systems as agencies of violence reduction and incentives toward attitudes and dispositions conducive to the sociosymbolic competition that fuelled consumer demand in physically pacified but sublimely and functionally aggressive marketplaces.<sup>81</sup> If we look again at our narrative thus far we might suggest that, within a context of enhanced enforcement, delegation of authority, changing circumstances and the proliferation of an increasingly commercial mentality along with the requisite potential for abstract 'criminality', we seem to be looking at the beginnings of the socio-economic marginalisation and obsolescence of physically violent criminality.<sup>82</sup> In Hall's<sup>83</sup> terms, "as we became less violent and bloodthirsty we became richer and more pacified but possibly less honourable and... less egalitarian; violence looks to have been sublimated into symbolic and toned-down practical forms rather than dispersed into the transcendental realm of spirituality".

Yet we can take this at least one step further. In light of the above, we might observe, as does Hall,<sup>84</sup> that there are two mutually opposed conditions in which our social order cannot function. With its dual need for pacified trading networks as well as producers, merchants and consumers less likely to acquire property and resolve disputes with violence, it is immediately obvious that capitalism cannot function in chaotic, violent conditions. Equally, however, the requirement for pacified sociosymbolic competition also means that it cannot develop in conditions of excessive pacification reproduced by institutionalized, diffused and internalized altruism. Thus we have to consider the proposition that the measured altruism bound

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<sup>80</sup> Elias, 1994 [1939]

<sup>81</sup> see Hall, 2007; 2012

<sup>82</sup> see Walsh, 1994

<sup>83</sup> see Hall, 2012: 25

<sup>84</sup> Hall, 2014

by custom and law that helped to facilitate the growth of the medieval distributivist economy became dysfunctional in an early market-capitalist economy that was more dependent on extracting surpluses from all economic transactions and diffusing aggressive but non-violent competitive individualism throughout the whole sociosymbolic field. When it comes down to it, we might suggest that the function of legal systems, alongside social and cultural change, is to keep social order and subjectivity oscillating between these two poles, as if captured in a magnetic field<sup>85</sup> or held in some sort of socio-cultural Lagrangian point. The regulatory regimes that have grown around market capitalism open up a third space between these extremes, between pacified order and violent disorder – a space of what we might call ‘orderly disorder’ – in which the fundamental objective is, contra Foucault,<sup>86</sup> not to create a ‘disciplinary society’, or, contra Garland,<sup>87</sup> a ‘culture of control’ so much as to systematically facilitate and harness the tension between pacification and stimulation that provided much of the dynamic force behind early capitalism’s proliferation of trading activity and the development of the pseudo-pacified socio-economic competition we now call ‘consumer culture’.

While we do not have the space for full consideration of appropriate examples, the subsequent development of the English legal system and the pseudo-pacification process into the fifteenth through eighteenth centuries at least provides us with some indication of what this concept of ‘orderly disorder’ actually means in the context of systems of socio-economic regulation. It is often remarked just how brutal and censorious English socio-legal regulation – known as the ‘Bloody Code’ – became in the run-up to the industrial revolution. However, it had both shape and function. Important and prominent statutes such as the Waltham Black Acts had a very clear objective and focus, which ultimately came down, as Losurdo<sup>88</sup> suggests, to “terroristic legislation in defence of property”. In his well-known commentary on the relationship between property and eighteenth century criminal law, Hay<sup>89</sup> notes that

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<sup>85</sup> see Hall, 2015

<sup>86</sup> Foucault, 1991

<sup>87</sup> Garland, D. *The Culture of Control: Crime and Social Order in Contemporary Society*, (Oxford: Oxford University Press, 2001)

<sup>88</sup> Losurdo, D. *Liberalism: A Counter-History*, (London: Verso, 2011) 78

<sup>89</sup> Hay, D. ‘Property, Authority and Criminal Law’ in *Albion’s Fatal Tree: Crime and Society in Eighteenth Century England*, Rev. Edn., edited by Douglas Hay, Peter Linebaugh, John Rule, E. P. Thompson & Cal Winslow, (London: Verso, 2011); see also Radzinowicz, L. ‘The Waltham Black Acts: Study of the Legislative Attitude Towards Crime in the Eighteenth Century’, *Cambridge Law*



the number of capital statutes grew from around 50 in 1688 to well over 200 in 1820, the vast majority of which were concerned with offences against property. Bourgeois legal power overwhelmingly involved protecting their own property holdings whilst expropriating and enclosing common land, ignoring traditional subsistence rights and criminalising minor acts of appropriation to the extent that even lowly forms of theft and property damage nominally attracted mandatory death sentences. Hay goes on, however, to note that the sheer prevalence of the death sentence actually goes some way to concealing the underlying function of criminal sanction. It is not a case of anyone who committed property offences, upon sentencing, immediately finding their way to the gallows – execution statistics, it seems, do not support such a simplistic conclusion – but instead the terror of a vicious penal code acting to theatrically emphasize the mercy of patronage and pardon in order to legitimize the power of the ruling class.

This punitive and severe approach to ‘lower class’ crimes that provided most lawbreakers with little beyond individual subsistence must be juxtaposed with a relatively lax, almost disinterested evaluation of forms of aggressive and exploitative practices still seen by many as ‘deviant’ but of substantial and systemic economic value. Many of the questionable practices of early capitalism, for example, seem to have attracted little in the way of determined censure, with growing tolerance of usury, price undercutting, short-weighting, low wages, misrepresentation of goods for sale and a host of petty fiddles, perks and pilferage, not to mention a completely unknown level of historical ‘white-collar’ criminality that attracted next to no censure. In the case of but one example, which perhaps reveals a degree of historical continuity in the decline of economically inhibitive aggression, Emsley<sup>90</sup> points to a class of economically functional deviance that was pretty much expected and for which businesses made allowances. The transportation of coal by canal during the eighteenth century allowed boatmen to sell some of the shipment on route and pocket any such takings, but instead of trying to deal with the problem miners were instructed to simply load more onto the boats than stated in the manifest, as if these offences were part of the ‘price of doing business’. In even more forthright terms, Emsley<sup>91</sup> continues:

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*Journal* 9 no. 1 (1945) 56-81

<sup>90</sup> Emsley, C. *Crime and Society in England: 1750-1900*, 4<sup>th</sup> Edn, (London: Routledge, 2010)

<sup>91</sup> *ibid.* 161

In early nineteenth-century Wigan the law appears to be have been administered humanely and impartially... except when it was involved with industry. Employers were rarely prosecuted, and if convicted were only moderately fined... on the other hand, heavy sentences were imposed even for first offences of industrial theft. Workers, including children, were commonly prosecuted for breach of contract in leaving work without proper notice.

What we have here, we suggest, is slightly more complex than the usual analysis of differential power relations in the official criminalisation process because, rather than simply favouring the ruling elite, the prevailing approach to social regulation opens up a third space between order and disorder in which any ambitious entrepreneur can operate and prosper. It affords market capitalism the space to thrive within a regulatory framework of sufficient pacification for its various trading activities to take place relatively unmolested by taking a censorious, punitive approach to economically deleterious criminality. Conversely, it should be noted, however, that this economic system would also struggle to function within an overly pacified and altruistic context. Kant's<sup>92</sup> 'race of devils' was to be repressed by the collective reason of law, but when Durkheim<sup>93</sup> averred that a 'society of saints' would not last long, he was probably right but for the wrong reasons. The violence and immorality, which in the pre-modern era were performed as substantive practices in the service of order and disorder were sublimated and acted out as symbolic interplay, thus establishing the dynamic condition of pseudo-pacified 'orderly disorder'.

The upshot is that, instead of a unipolar, monotone emphasis on social control, what we see is a dynamic yet undialectical tension between the pacification of violent urges and the stimulation of the libidinal forces of ambition, competition, envy and so on.<sup>94</sup> It is 'undialectical' because neither aspect of the process, and therefore the process itself, changes according to any politically relevant recognition of its own or the other's contradictions; they simply remain in dynamic tension producing energy. This arrangement is maintained by the abolition of the political discourses that can reveal and inform action against these contradictions and the deleterious social effects of the

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<sup>92</sup> Kant, I. *The Metaphysics of Morals*, (Cambridge: Cambridge University Press, 1996)

<sup>93</sup> Durkheim, E. *The Rules of the Sociological Method*, (New York, NY: The Free Press, 1966)

<sup>94</sup> see Hall, 2012; 2014

overall process itself.<sup>95</sup> Western legal systems, it seems, simultaneously stimulate and repress libidinal energy in order to create the dynamic force – pseudo-pacified sociosymbolic competition within the confines of consumer marketplaces – that energizes and drives economic cycles. However, in order to maintain such cycles Western legal systems on balance tend to lean more towards stimulation than repression, resulting in deviant activity inevitably spilling over its repressive boundaries. Indeed, in partnership with a measured amount of punitiveness, acted out predominantly in the symbolic realm, comes a far more open, discretionary take on forms of pacified low-level deviance that enable continued economic vitality. Thus European ethico-legal structures can create a regulatory ‘third space’ in which certain forms of deviance not only thrive but are integral to the continued viability of the prevailing economic system.

#### **4. Conclusion**

The purpose of this article is to explore the origins of early market economies, particularly in England, in relation to the remarkable, progressive minimisation of interpersonal violence after the fourteenth century, and to put forward the claim that it was not so much ‘spiritualized’<sup>96</sup> or eliminated from everyday life as repressed and sublimated to perform vital functions in the engine-room of the market system. We began with an analysis of the socio-historical context after the fall of the Roman Empire in order to explore what appears to have been an extraordinary decline in cultural vibrancy, economic production and social sophistication. The vacuum left in the wake of Roman power seems not to have been filled by any comparable power base for a number of centuries, to the extent that English life, with comparable conditions across other parts of northern Europe, seems to have descended into a kind of violent free-for-all reminiscent of, if not actually reflected in Hobbes’s concept of an anarchic ‘state of nature’. When power did successfully coalesce under a relatively central authority, it was that of the Norman invaders after 1066, who, initially at least, seem to have been notably unsuccessful in their attempts to govern large swaths of the country, which ultimately gave rise to a feudal social order simultaneously plagued by and built upon predatory exploitation and interpersonal violence.

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<sup>95</sup> see Hall, 2012; Winlow & Hall, 2013

<sup>96</sup> see Spierenburg, 2008

The traditional explanation of why serious physical violence in English society started to decline after the reign of Edward I has drawn much from the work of Norbert Elias, specifically his concept of a 'civilizing process'. In this standard formulation, growing centralisation of power allowed for the greater political complexities and social interdependence that eventually took on a life of their own as they began to reconfigure the emotional dispositions of the general population. Furthermore, he argues, the emergence of physically non-violent sensibilities betrays a naturalistic, evolutionary drive toward pacified sociality, indicating an irreducible relationship between complexity and pacification. Unfortunately, Elias's thesis comes laden with a number of problems, not least of which is his tendency to gloss over the relationship between internal and external worlds, particularly in light of the observation that crime seems not to have 'civilized' so much as changed with the times and developed into a more modernist form with a greater propensity for property offences. What this empirical tipping point allows us to do, however, is to begin moving beyond the problematic bounds of Elias's thesis to consider the possibility of a rather more dualistic and dynamic analytical model of the relationship between contemporary political economy and the diffusion of 'pseudo-pacified' social interaction and cultural-subjective sensibilities. It is, in short, difficult to say that violence was fully pacified because following sublimation it seems to have re-emerged not just in organized military forms but also more subtly in aggressive rule-bound sociosymbolic competition that often provided the motivations for more abstract forms of criminality.

In light of these problems a number of contemporary theorists have begun to move away from Elias's work toward locating pacification firmly within the unstable yet dynamic context of market economies in a tense undialectical relationship between social and individual subjectivity. What seems to have happened is that attempts to repair England's social order after the manifold depredations of the Dark and early Middle Ages relied on a certain amount of distributivism captured, as much as anything, by the delegation of social responsibility for civic peace and moves toward a slightly more equitable distribution of wealth in order to stem the tide of brutality. While these measures probably were not anywhere near as successful as might have been hoped, and were no doubt plagued by all manner of double-dealing, they succeeded in evacuating enough violence from everyday life to facilitate a moderate

upturn in trading activity, which, alongside other significant legal changes, started to erode the ethical codes and dispositions associated with distributivism. In other words, prevailing legal systems, as they solicited the population into more entrepreneurial dispositions, encouraged the further sublimation of violence into pseudo-pacified sociosymbolic competition within growing consumer marketplaces. What this means, however, is that the long term decline in violence between the fifteenth and twentieth centuries is less of an evolutionary drive than a secondary and rather fragile and dependent product of economic functions and relations operating within modernist regulatory frameworks.